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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY)
13 INTERNATIONAL, a California not-)
for-profit religious corporation;)

14 Plaintiff,)

15 vs.)

16 GERALD ARMSTRONG; MICHAEL WALTON;)
17 et al.,)

18 Defendants.)

19 _____)
GERALD ARMSTRONG,)

20 Cross-Complainant,)

21 vs.)

22 CHURCH OF SCIENTOLOGY)
23 INTERNATIONAL, A California)
Corporation; DAVID MISCAVIGE;)
24 DOES 1 to 100;)

25 Cross-Defendants)
26 _____)

RECEIVED

MAR 03 1994

HUB LAW OFFICES

1 ANDREW H. WILSON deposes and says:

2 1. My name is Andrew H. Wilson and I am one of the
3 attorneys responsible for the representations of the Plaintiff
4 and Cross-Defendant in this action. I have personal knowledge of
5 the facts set forth in this Declaration and could competently
6 testify thereto if called as a witness.

7 2. Attached hereto and incorporated herein are true and
8 correct copies of documents filed with this Court in the instant
9 action.

10 Exhibit A: Church of Scientology International's
11 Demurrer to Gerald Armstrong's Cross-
12 Complaint and Church of Scientology
13 International's Memorandum of Points and
14 Authorities in Support of its Demurrer to
15 Gerald Armstrong's Cross-Complaint

16 Exhibit B: First Amended Verified Cross-Complaint for
17 Declaratory Relief and for Abuse of Process

18 I declare under penalty of perjury under the laws of the
19 State of California that the foregoing is true and correct.

20 Executed this 1st day of March, 1994, at San Francisco,
21 California.

22
23 /5/
24 Andrew H. Wilson
25
26
27

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8 Attorneys for Plaintiff and
Cross-Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
13 INTERNATIONAL, a California not-)
for-profit religious corporation;) CHURCH OF SCIENTOLOGY
14 Plaintiffs,) INTERNATIONAL'S DEMURRER TO
15) GERALD ARMSTRONG'S CROSS-
vs.) COMPLAINT
16)
GERALD ARMSTRONG; MICHAEL WALTON;) DATE: February 11, 1994
17 et al.,) TIME: 9:00 a.m.
Defendants.) DEPT: 1
18 _____)
19 GERALD ARMSTRONG,) DISCOVERY CUT-OFF: None
MOTION CUT-OFF: None
20 Cross-Complainant,) TRIAL DATE: None
21 vs.)
22 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
23 Corporation; DAVID MISCAVIGE;)
DOES 1 to 100;)
24 Cross-Defendants.)
_____)

25 Plaintiff and cross-defendant, Church of Scientology
26 International ("the Church"), demurs to the first and only cause
27 of action in the cross-complaint of Gerald Armstrong on the
28

1 following grounds:

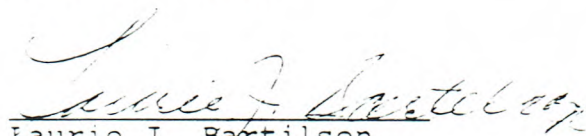
2 1. The cross-complaint does not state facts sufficient to
3 constitute a cause of action against the Church;

4 2. There is another action pending between the parties to
5 this cross-complaint on the same cause of action as alleged in
6 the cross-complaint. That action is the cross-complaint in Case
7 No. BC 052395 in the Superior Court of Los Angeles County, and
8 the Church asks that the Court take judicial notice of that
9 action under Evidence Code Section 42(d). Certified copies of
10 the Verified Amended Cross-Complaint and the Church's Answer to
11 Verified Amended Cross-Complaint are attached to the Church's
12 concurrently filed Request for Judicial Notice as Exhibits 1
13 and 2.

14 DATED: January 4, 1994

BOWLES & MOXON

15
16 By:


Laurie J. Bartilson

17
18 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

19 Attorneys for Plaintiff and Cross-
20 Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL
21
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 3, 1994, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S DEMURRER TO GERALD ARMSTRONG'S CROSS-COMPLAINT on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
707 Fawn Drive
San Anselmo, CA 94960

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 3, 1994 at Los Angeles, California.

**(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

[] ** Such envelopes were hand delivered by
Messenger Service

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of
the State of California that the above is true and
correct.

[] (Federal) I declare that I am employed in the
office of a member of the bar of this court at
whose direction the service was made.

Print or Type Name

Signature

* (By Mail, signature must be of person depositing
envelope in mail slot, box or bag)

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8 Attorneys for Plaintiff and
Cross-Defendant CHURCH OF
SCIENTOLOGY INTERNATIONAL
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
13 INTERNATIONAL, a California not-)
for-profit religious corporation;) CHURCH OF SCIENTOLOGY
14 Plaintiffs,) INTERNATIONAL'S MEMORANDUM
15 vs.) OF POINTS AND AUTHORITIES
16 GERALD ARMSTRONG; MICHAEL WALTON;) IN SUPPORT OF ITS DEMURRER
et al.,) TO GERALD ARMSTRONG'S
17 Defendants.) CROSS-COMPLAINT
18) DATE: February 11, 1994
19) TIME: 9:00 a.m.
20) DEPT: 1
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1 I. INTRODUCTION

2 The cross-complaint filed herein by defendant Gerald
3 Armstrong ("the Second Cross-complaint") is a duplicative action
4 against plaintiff Church of Scientology International ("the
5 Church") which should not be countenanced by this Court for two
6 reasons. First, the rambling allegations of the Second Cross-
7 complaint do not, as a matter of law, state a claim for abuse of
8 process. The allegations all delineate conduct which is: (a)
9 barred on its face by the statute of limitations; and/or (b)
10 privileged pursuant to Civil Code § 47(2). The Church's demurrer
11 should be sustained for this reason alone.

12 Second, the Second Cross-complaint is an exact duplicate of
13 a cross-complaint filed by Armstrong in Case No. BC 052395, Los
14 Angeles Superior Court ("the First Cross-complaint"), with the
15 following exceptions:

16 * Armstrong has named only two cross-defendants
17 herein, instead of the seven named in the First Cross-
18 complaint,¹ and has eliminated reference to these
19 cross-defendants (no cross-defendant save for the
20 Church has been served in either action);

21 * Armstrong attributes all actions in the Second
22 Cross-complaint to an undefined "Scientology"; in the
23 First Cross-complaint, he attributes all of those same

24 ¹ The cross-defendants herein are the Church and David
25 Miscavige. Mr. Miscavige has not been served. In the previous
26 action, Armstrong named as cross-defendants the Church, David
27 Miscavige, Church of Scientology of California, Religious
28 Technology Center, Church of Spiritual Technology, Author Services,
Inc., Author's Family Trust, Estate of L. Ron Hubbard and Norman
Starkey. No attempt was ever made by Armstrong to serve any of
these cross-defendants, other than the Church.

1 actions instead to "the ORG";²

2 * The First Cross-complaint includes causes of
3 action for declaratory relief and breach of contract
4 which are not included herein;

5 * Armstrong has added two paragraphs to the
6 Second Cross-complaint, alleging that "Scientology"
7 abused process by filing two lawsuits: Case No. BC
8 084642, currently pending in the Los Angeles Superior
9 Court, and the complaint herein; and

10 * Armstrong has added herein an improper request
11 for punitive and exemplary damages.³

12 As demonstrated below, for excellent policy reasons, under

13 ² In the cross-complaint in the previous action, Armstrong
14 alleges "Cross-defendant corporations, CSI, CSC, RTC, COST, and ASI
15 act as one organization and are termed hereinafter as the 'ORG.'" [Exhibit 1 to Request for Judicial Notice, ¶ 8.] This language is
16 eliminated from the corresponding paragraph of the cross-complaint
herein, paragraph 6. [Exhibit 2 to Request for Judicial Notice.]

17 ³ Code of Civil Procedure Section 425.14 provides in relevant
18 part that

19 No claim for punitive or exemplary damages against a
20 religious corporation or religious corporation sole shall
21 be included in a complaint or other pleading unless the
22 court enters an order allowing an amended pleading that
23 includes a claim for punitive or exemplary damages to be
24 filed. The court may allow the filing of an amended
pleading claiming punitive or exemplary damages on a
motion by the party seeking the amended pleading and upon
a finding, on the basis of supporting and opposing
affidavits presented, that the plaintiff has established
evidence which substantiates that plaintiff will meet the
clear and convincing standard of proof under Section 3294
of the Civil Code.

25 The Church is a non-profit religious corporation, organized under
26 the laws of the State of California, and considered a charitable,
27 religious organization by the Internal Revenue Service.
28 Accordingly, the Church has moved to strike Armstrong's request for
punitive damages. [See, Memorandum of Points and Authorities in
Support of Church of Scientology International's Motion to Strike
All or Portions of Armstrong's Cross-Complaint, pp. 7 - 8, and
Exhibits B and D thereto.]

1 California law a party is not permitted to simultaneously
2 maintain identical actions in two different forums, again
3 justifying the sustaining of the Church's demurrer. At the very
4 least, litigation of the Second Cross-complaint must be abated
5 until after there is a final determination of Armstrong's claims
6 on the First Cross-complaint.

7 **II. STATEMENT OF FACTS**

8 Defendant Armstrong filed the Second Cross-complaint in this
9 action on November 30, 1993. [Ex. 3 to Request for Judicial
10 Notice.] He filed the First Cross-complaint on October 7, 1992.
11 [Ex. 1 to Request for Judicial Notice.] Both Cross-complaints
12 assert a cause of action for abuse of process. [Ex. 1 to Request
13 for Judicial Notice, Second Cause of Action, ¶¶ 64 - 69; Ex. 3 to
14 Request for Judicial Notice, ¶¶ 57 - 62.]

15 The First Cross-complaint has not been adjudicated, and is
16 still pending in Los Angeles Superior Court. On March 3, 1993,
17 the Church filed a motion for summary adjudication of, inter
18 alia, the cause of action for abuse of process which is
19 duplicated in the Second Cross-complaint [Exs. 4 - 5 to Request
20 for Judicial Notice.] All activity in that action, including
21 adjudication of the Church's pending motion, was stayed by the
22 Los Angeles court on March 23, 1993 [Ex. 6 to Request for
23 Judicial Notice, Minute Order]. The condition delineated by the
24 Court for a lifting of the stay -- a decision by the Court of
25 Appeal concerning Armstrong's appeal of the Court's Order of
26 Preliminary Injunction -- has not yet occurred. Hence the First
27 Cross-complaint, and the dispositive motion concerning it, await
28 determination.

1 A side-by-side comparison of these cross-complaints reveals
2 the Second Cross-complaint to be a slightly word-processed
3 duplicate of the First Cross-complaint. Both documents are
4 rambling diatribes which allege conduct by "the ORG" (First
5 Cross-Complaint) or "Scientology" (Second Cross-complaint). Most
6 of the allegations concern actions which allegedly happened to
7 non-parties, or which supposedly occurred many years ago. The
8 First Cross-complaint contains 72 paragraphs. Sixty of those
9 paragraphs have been duplicated in the Second Cross-complaint,
10 modified only to accuse "Scientology" instead of the "ORG," to
11 add a few phrases of irrelevant hyperbole and to delete
12 references to previously named cross-defendants. [Exs. 1 and 3
13 to Request for Judicial Notice.] The origin of each paragraph in
14 the Second Cross-complaint and in the First Cross-complaint can
15 be easily observed by directly comparing the two documents, with
16 the following correlation. The list shows the identity of
17 paragraphs by listing first, the paragraph in the First Cross-
18 complaint and second, the identical paragraph in the Second
19 Cross-complaint, as: "First Cross-complaint Paragraph Number:
20 Second Cross-complaint Paragraph Number": 1:1; 2:2; 4:3; 6:4;
21 7:5; 8:6; 9:7; 12:8; 13:9; 14:10; 15:11; 16:12; 17:13;
22 18:14;19:15; 20:16; 21:17; 22:18; 23:19; 24:20; 25:21; 26:22;
23 27:23; 28:24; 29:25; 30:26; 31:27; 32:28; 33:29; 34:30; 35:31;
24 36:32; 37:33; 38:34; 39:35; 40:36; 41:37; 42:38; 43:39; 44:40;
25 45:41; 46:42; 47:43; 48:44; 49:45; 50:46; 51:47; 52:48; 53:49;
26 54:50; 55:51; 56:52; 57:53; 58:56; 64:57; 65:58; 66:59; 67:60;
27 68:61; 69:62. [Id.]

28 The only paragraphs which Armstrong did not duplicate from

1 the First Cross-complaint consist of paragraphs identifying
2 additional cross-defendants (e.g., ¶¶ 3, 5, 10, 11), none of whom
3 were ever served, and paragraphs defining claims for declaratory
4 relief and breach of contract (¶¶ 59 - 63, 70 - 72).

5 Armstrong has added two paragraphs to the Second Cross-
6 complaint, paragraphs 54 and 55. They state:

7 54. On July 8, 1993, Scientology filed another
8 lawsuit against ARMSTRONG styled Church of Scientology
9 International v. Armstrong, Los Angeles Superior Court,
10 Case No. BC 084 642 (hereinafter "Armstrong III") in
11 retaliation for ARMSTRONG's continuing to publicly
12 speak out in the news media on the subject of
13 Scientology and its practices and for filing a
14 declaration on behalf of a defendant, Lawrence
15 Wollersheim, whom Scientology had sued.

16 55. On July 23, 1993, Scientology filed the
17 instant lawsuit against ARMSTRONG (hereinafter
18 Armstrong IV"). Said lawsuit is without merit and is
19 yet another part of the on-going Fair Game activity
20 that Scientology has historically directed against
21 ARMSTRONG which uses the legal system as an engine to
22 harass and to attempt to destroy and ruin ARMSTRONG.

23 Exhibit 3 to Request for Judicial Notice.

24 These are the only allegations which are not duplicative of
25 the earlier action. As demonstrated below, they are insufficient
26 to state a new claim for abuse of process, and can never be
27 amended to so state such a claim.

28 ///

1 III. ARGUMENT

2 A. Demurrer Must Be Sustained Because Armstrong Has Not
3 And Cannot Allege Facts Sufficient To State A Claim For
4 Abuse Of Process

5 The Second Cross-complaint for Abuse of Process is
6 inadequate because: (1) the alleged pre-November 30, 1993 conduct
7 is precluded by the one-year statute of limitations; and (2) the
8 alleged post-November 30, 1992 conduct is absolutely privileged
9 pursuant to Civil Code Section 47(2).⁴

10 The Second Cross-complaint was filed on November 30, 1993.
11 As will be discussed, conduct occurring before November 30, 1993
12 is precluded by the applicable limitations statute. The only
13 conduct alleged by Armstrong which is alleged to have occurred
14 after November 30, 1992, is alleged in paragraphs 54 and 55,
15 quoted verbatim at pages 4-5, supra. These paragraphs allege
16 merely that the Church filed two complaints against Armstrong,
17 one "in retaliation" and the other (this one) "without merit."
18 The complaint does not allege that either of these claims have
19 been terminated in a manner favorable to Armstrong; indeed, this
20 Court may take judicial notice that both are presently pending
21 against Armstrong. [Exs. 6 and 7 to Request for Judicial Notice.]

21 ///

22 ///

23 ///

24 ⁴ The Church does not, by the making of this demurrer,
25 admit that any of the conduct alleged by Armstrong actually
26 occurred; indeed, the bulk of the pre-November, 1992 acts which
27 Armstrong alleges are demonstrable figments of his fertile
28 imagination. For purposes of demurrer, however, all of the
allegations of the Cross-complaint must be assumed to be true. Any
factual dispute as to these allegations is irrelevant; even as
alleged, they do not state a claim for abuse of process.

1 1. The Conduct Alleged To Have Occurred Before
2 November 30, 1992 Is Precluded by the Statute of
3 Limitations

4 The one-year statute of limitations pursuant to Code of
5 Civil Procedure Section 340 applies to a cause of action for
6 abuse of process. Thornton v. Rhoden (1966) 245 Cal.App.2d 80,
7 95, 53 Cal.Rptr. 706, 717. In Thornton, the plaintiff alleged
8 that defendant had abused process by taking, transcribing and
9 filing a deposition in which the defendant made false and
10 defamatory claims. The deposition was taken and transcribed more
11 than one year before the action for abuse of process was filed,
12 and filed one year exactly before the filing of the abuse of
13 process complaint. The Court of Appeal found that the alleged
14 taking and transcribing of the deposition were beyond the
15 statute, and could not be considered part of the plaintiff's
16 abuse of process claim. Id.⁵

17 Here, alleged conduct which purportedly occurred prior to
18 November 30, 1992 is similarly beyond the statute of limitations,
19 and any abuse of process claim which could possibly attach to
20 those claims (and the Church considers that none could) is time-
21 barred. On the face of the Second Cross-complaint, the conduct
22 alleged in paragraphs 9 through 53 and 56 is alleged to have
23 occurred before November 30, 1991. Accordingly, the conduct
24 alleged in those paragraphs is barred by the statute of
25 limitations.

26 ⁵ The court went on to hold that defendant's actions were
27 privileged, and "even if we disregard the privilege, it is obvious
28 that just taking the ordinary steps in connection with the taking,
 transcribing and filing of the deposition cannot be an abuse of
 process." 53 Cal.Rptr. at 720.

1 2. The Conduct Post-November 30, 1992 Cannot Be the
2 Basis For An Abuse of Process Claim Because It Is
3 Privileged

3 To state a claim for abuse of process, a plaintiff must
4 allege two elements: "first, an ulterior purpose, and second, a
5 wilful act in the use of the process not proper in the regular
6 conduct of the proceeding." Oren Royal Oaks Venture v.
7 Greenberg, Bernhard, Weiss & Karma, Inc. (1986) 42 Cal.3d 1157,
8 1168, 232 Cal.Rptr. 567, 728 P.2d 1202, quoting Templeton Feed &
9 Grain v. Ralston Purina Co. (1968) 69 Cal.2d 461, 466, 72
10 Cal.Rptr. 344, 446 P.2d 152. Here, Armstrong alleges that the
11 "wilful acts in the use of process" are the filing by
12 "Scientology" of a lawsuit on July 8, 1993, and the filing by
13 "Scientology" of the complaint in this case on July 23, 1993.

14 Civil Code Section 47 provides in relevant part that "A
15 privileged publication or broadcast is one made: (b) In
16 any judicial proceeding. . . ." As the California Supreme Court
17 recently re-emphasized,

18 For well over a century, communications with "some
19 relation" to judicial proceedings have been absolutely
20 immune from tort liability by the privilege codified as
21 section 47(b). At least since then-Justice Traynor's
22 opinion in Albertson v. Raboff (1956) 46 Cal.2d 375,
23 295 P.2d 405, California courts have given the
24 privilege an expansive reach. Indeed, as we recently
25 noted, "the only exception to [the] application of
26 section 47(2) [now § 47(b)] to tort suits has been for
27 malicious prosecution actions. [Citations]."

28 Rubin v. Green (1993) ___ Cal.3d ___, 17 Cal.Rptr.2d 828, 831,

1 quoting Silberg v. Anderson (1990) 50 Cal.3d 205, 216, 266
2 Cal.Rptr. 638, 786 P.2d 365. In Rubin, the court held that even
3 communications and communicative conduct bearing "some relation"
4 to an anticipated lawsuit were privileged. Id. at 832 - 838.

5 Moreover, in Oren Royal Oaks, supra, the California Supreme
6 Court, upholding a long line of appellate court cases, held that
7 the exact conduct alleged by Armstrong -- filing or maintaining a
8 lawsuit -- cannot support a claim for abuse of process, stating:

9 The relevant California authorities establish
10 . . . that while a defendant's act of improperly
11 instituting or maintaining an action may, in an
12 appropriate case, give rise to a cause of action for
13 malicious prosecution, the mere filing or maintaining
14 of a lawsuit -- even for an improper purpose -- is not
15 a proper basis for an abuse of process action. The
16 overwhelming majority of out-of-state precedents have
17 reached the same conclusion.

18 42 Cal.3d at 1169 (citations omitted). The Court went on to
19 explain that it agreed with the underlying rationale for these
20 decisions, which is to afford litigants an appropriate
21 accommodation between the freedom of the individual to seek
22 redress from the courts, and the interest of a potential
23 defendant in being free from inappropriate litigation. The Court
24 noted that the common law tort of malicious prosecution, which
25 provides this accommodation, requires that a plaintiff prove that
26 "the prior action (1) was commenced by or at the direction of the
27 defendant and was pursued to a legal termination in his . . .
28 favor . . . ; (2) was brought without probable cause . . . ; and

1 (3) was initiated with malice. . . ." Id., quoting Bertero v.
2 National General Corp. (1974) 13 Cal.3d 43, 50, 118 Cal.Rptr.
3 184, 529 P.2d 608 [citations omitted].

4 If Armstrong were permitted to allege an abuse of process
5 claim against the Church merely by alleging that the Church had
6 filed a lawsuit for some ulterior purpose, the protections
7 afforded by the requirements of a malicious prosecution claim
8 would be annihilated. In the words of the California Supreme
9 Court,

10 If . . . the filing of an action for an improper
11 'ulterior' purpose were itself sufficient to give rise
12 to an abuse of process action, the 'lack-of-probable-
13 cause' element of the malicious prosecution tort would
14 be completely negated; even if an individual could
15 demonstrate that he had reasonable cause to believe
16 that his initial lawsuit had merit when he filed the
17 action, he would still face potential liability under
18 an abuse of process theory. Because the lack-of-
19 probable-cause requirement in the malicious prosecution
20 tort plays a crucial role in protecting the right to
21 seek judicial relief, we agree with the prior decisions
22 which have concluded that this element may not be
23 circumvented through expansion of the abuse of process
24 tort to encompass the alleged improper filing of a
25 lawsuit.

26 Id. at 1169-1170 (citations omitted, emphasis supplied).

27 Here, the only conduct which Armstrong has alleged in his
28 Second Cross-complaint which is not barred by the statute of

1 limitations is the filing of two lawsuits by the Church.⁶ These
2 allegations, without more, cannot, under Oren Royal Oaks, support
3 a claim for abuse of process. Moreover, because neither of the
4 actions concerning which Armstrong complains have been "pursued
5 to legal termination in [Armstrong's] favor," Armstrong cannot by
6 repleading state a claim for malicious prosecution. Id. Under
7 these circumstances, the Court should sustain the Church's
8 demurrer without leave to amend.

9 **B. Demurrer Must Be Sustained Because There Is Another**
10 **Action Pending Between The Same Parties On The Same**
11 **Cause of Action**

12 Even if the Court determines that Armstrong's Second Cross-
13 complaint could somehow allege a claim for abuse of process,
14 demurrer must still be sustained. Code of Civil Procedure
15 Section 430.10(c) provides, in relevant part, that a cross-
16 defendant may object to a cross-complaint by demurrer when,
17 "[t]here is another action pending between the same parties on
18 the same cause of action." Demurrer is proper in such a case
19 because the first suit affords an ample remedy, rendering the
20 second action unnecessary and vexatious. National Auto. Ins. Co.
21 v. Winter (1943) 58 Cal.App.2d 11, 16, 136 P.2d 22, 25. "It is
22 not the policy of the law to allow a new and different suit
23 between the same parties, concerning the same subject matter,
24 that has already been litigated. Neither will the law allow the
25 parties to trifle with the courts by piecemeal litigation."
26 Wulfjen v. Dolton (1944) 24 Cal.2d 891, 151 P.2d 846, 848,
27 quoting Bingham v. Kearney 136 Cal. 175, 177, 68 P. 597.

28 ⁶ This is also the only conduct alleged which has not already
been alleged by Armstrong in his First Cross-complaint.

1 Accordingly, the law will not permit a cross-defendant to be
2 oppressed by two actions for the same cause of action where the
3 cross-complainant has a complete remedy in one action. Fresno
4 Investment Co. v. Russell (1921) 55 Cal.App. 496, 497, 203 P.
5 815. The second action will be abated by demurrer. Furthermore,
6 where the conditions for an order of abatement exists, such an
7 order issues as a matter of right and not as a matter of
8 discretion. Lawyers Title Ins. Corp. v. Superior Court (1984)
9 151 Cal.App.3d 455, 460, 199 Cal.Rptr. 1, 4.⁷

10 Here, through the addition of two new allegations --
11 amendments which allege only privileged conduct, see Part III A
12 2, supra -- Armstrong seeks to allege a "different" cause of
13 action for abuse of process. These changes do nothing to defeat
14 the Church's demurrer.

15 To prevail on a demurrer pursuant to §430.10(c), the Church
16 must demonstrate that the cause of action for abuse of process
17 alleged in the First Cross-complaint is, for all practical
18 purposes, identical with the cause of action for abuse of process
19 alleged in the Second Cross-complaint. Burnard v. Irigoyen (1943)
20 56 Cal.App.2d 624, 631, 133 P.2d 3, 7. The matters in the prior
21 pending action must be such that a judgment on the merits in the
22 first action would constitute a bar to the second action. Hall v.
23 Susskind (1895) 109 Cal.203, 41 P. 1012, aff'd (1898) 120 Cal.

24

25 ⁷ This is the case because "[u]nder the rule of exclusive
26 concurrent jurisdiction, when two superior courts have concurrent
27 jurisdiction over the subject matter and the parties, the first
28 court to assume jurisdiction has exclusive and continuing
 jurisdiction until such time as all necessarily related matters
 have been resolved." Lawyers Title Ins. Corp., supra, 151
 Cal.App.3d at 460, 199 Cal.Rptr. at 4 (citation omitted).

1 550, 53 P. 46. Moreover, the second claim must involve the same
2 parties that were involved in the first claim. W.R. Grace & Co.
3 v. California Employment Com. (1944) 24 Cal.2d 720, 727, 151 P.2d
4 215, 219. The parties must stand in the same relative positions
5 as plaintiff and defendant in the two actions. Western Pine &
6 Steel Co. v. Tuolumne Gold Dredging Corp. (1944) 63 Cal.App.2d
7 21, 29, 146 P.2d 61, 65. Finally, the moving party must show
8 that there is, in fact, another pending action, which was
9 commenced before the filing of the action in which demurrer is
10 urged. Kirman v. Borzage (1949) 89 Cal.App.2d 898, 903, 202 P.2d
11 303. An action is deemed to be pending from the time of its
12 filing until its final determination on appeal. C.C.P. §1049.

13 Here, Armstrong has not even attempted to allege different
14 facts in support of his abuse of process claim. Virtually every
15 allegation contained in the Second Cross-complaint is a copy of
16 an allegation in the First Cross-complaint, excepting only the
17 two paragraphs alleging privileged conduct and discussed in Part
18 III A, supra. Armstrong's claims of years of "harassment" by the
19 Church, which foolishly paid him large sums of money in
20 settlement of one false claim, are already the subject of
21 litigation in Los Angeles. Armstrong may not re-litigate the
22 same claims here.

23 Similarly, there is an identity of parties between the two
24 actions. Both of the cross-defendants named in the Second Cross-
25 complaint were named as cross-defendants by Armstrong in the
26
27
28

1 First Cross-complaint.⁸ In the second action, as in the first,
2 only the Church has been served with the Cross-complaint.
3 Moreover, the Church and Armstrong stand in precisely the same
4 position in the Second Cross-complaint as they do in the First.

5 Finally, it is plain from court records which this Court may
6 judicially notice that the First Cross-complaint was commenced
7 before the Second Cross-complaint, and is still pending.

8 Armstrong filed a cross-complaint in the initial action on July
9 22, 1992. [Ex. 8 to Request for Judicial Notice.] On October 7,
10 1992, he filed an amended cross-complaint in that action, the
11 First Cross-complaint, which includes as its second cause of
12 action the claim for abuse of process which Armstrong has
13 replicated herein. [Ex. 1 to Request for Judicial Notice.] On
14 March 3, 1993, the Church filed a motion for summary adjudication
15 of, inter alia, the second cause of action contained in the First
16 Cross-complaint. [Exs. 4 - 5 to Request for Judicial Notice.]
17 On March 23, 1993, the Court in the Los Angeles action ordered a
18 stay of all proceedings therein, pending resclusion of an appeal
19 filed by Armstrong to the preliminary injunction obtained by the
20 Church. [Ex. 8 to Request for Judicial Notice.] The appeal of
21 the preliminary injunction has been briefed to the Second
22 District Court of Appeal, but has not yet been set for oral

23

24 ⁸ The fact that Armstrong has named, but not served, other
25 defendants in the first action is irrelevant. The only question to
26 be decided is whether the rights of the parties to the second
27 action will be completely adjudicated by the first. Because here
28 all of the named parties to the second action (Armstrong, the
Church and Mr. Miscavige) are also named parties to the first
action, standing in the same relationship to one another, their
collective rights will be completely determined in the first
action, rendering the second action superfluous.

1 argument. [Ex. 9 to Request for Judicial Notice.] The entire Los
2 Angeles action, including Armstrong's First Cross-complaint, is
3 thus still awaiting determination.

4 With this identity of claims and parties present in a
5 currently pending prior action, this Court must sustain the
6 Church's demurrer pursuant to C.C.P. § 430.10(c).

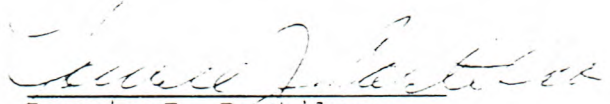
7 **IV. CONCLUSION**

8 Armstrong's Second Cross-complaint recites stale facts which
9 do not result in a claim for abuse of process. The few
10 allegations which concern matters not barred from consideration
11 by the relevant statute of limitations are barred from
12 consideration by the absolute privilege afforded by Civil Code
13 Section 47(b). Moreover, the Second Cross-complaint is a nearly
14 exact duplicate of an action already pending between these
15 parties in Los Angeles. Armstrong's frivolous reassertion of
16 these claims here wastes the time of both the Court and the
17 Church. The Church's demurrer must be sustained.

18 DATED: January 3, 1994

BOWLES & MOXON

19
20 By:


Laurie J. Bartilson

21
22 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

23 Attorneys for Plaintiff and Cross-
24 Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 3, 1994, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER TO GERALD ARMSTRONG'S CROSS-COMPLAINT on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
707 Fawn Drive
San Anselmo, CA 94960

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 3, 1994 at Los Angeles, California.

**(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

[]** Such envelopes were hand delivered by
Messenger Service

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of
the State of California that the above is true and
correct.

[] (Federal) I declare that I am employed in the
office of a member of the bar of this court at
whose direction the service was made.

John Hunter
Print or Type Name

[Signature]
Signature

* (By Mail, signature must be of person depositing
envelope in mail slot, box or bag)

** (For personal service signature must be that of
messenger)

1 Ford Greene, Esquire
California State Bar No. 107601
2 HUB LAW OFFICES
711 Sir Francis Drake Boulevard
3 San Anselmo, California 94960-1949
Telephone: (415) 258-0360

4
5 Attorney for Defendant
GERALD ARMSTRONG

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIN

10
11 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
12 net-for-profit religious)
corporation;)
13)
14 Plaintiffs,)
15 vs.)
16 GERALD ARMSTRONG; MICHAEL)
WALTON; et al,)
17 Defendants.)

No. 157 680
**FIRST AMENDED
VERIFIED CROSS-COMPLAINT
FOR DECLARATORY RELIEF AND
FOR ABUSE OF PROCESS**

18
19 GERALD ARMSTRONG,
20 Cross-Complainant,
21 -vs-

22 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
23 Corporation; DAVID MISCAVIGE;)
DOES 1 to 100;)
24 Cross-Defendant.)
25

Date: February 18, 1994
Time: 9:00 a.m.
Dept: One

26
27 Cross-Complainant GERALD ARMSTRONG alleges as follows:
28

PARTIES

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1. Cross-Complainant GERALD ARMSTRONG, hereinafter, "ARMSTRONG," is a resident of Marin County, California.

2. Cross-Defendant CHURCH OF SCIENTOLOGY INTERNATIONAL, hereinafter "CSI" or is a corporation organized and existing under the laws of the State of California, having principal offices and places of business in California and doing business within the State of California within the territorial jurisdiction of this Court.

3. Cross-Defendant DAVID MISCAVIGE, hereinafter "MISCAVIGE," is an individual domiciled in the State of California.

4. At all times herein mentioned, each Cross-Defendant was the agent, employee or coconspirator of each of the remaining Cross-Defendants, and in doing the things herein mentioned, each Cross-Defendant was acting within the course and scope of its employment and authority as such agent and/or representative and/or employee and/or coconspirator, and with the consent of the remaining Cross-Defendants.

5. CSI is subject to a unity of control, and the its corporate structure was created as an attempt to avoid payment of taxes and civil judgments and to confuse courts and those seeking redress for these Cross-Defendants' acts. Due to the unity of personnel, commingling of assets, and commonality of business objectives, these Cross-Defendants' attempts at separation of these corporations should be disregarded.

6. The designation of CSI as a "church" or religious entity is a sham contrived to exploit the protection of the First

1 Amendment of the United States Constitution and to justify their
2 criminal, and tortious acts against ARMSTRONG and others. Cross-
3 Defendant corporation is part of an international, money-making,
4 criminally motivated enterprise which subjugates and exploits its
5 employees and customers with coercive psychological techniques,
6 threat of violence and blackmail. CSI and other Scientology
7 corporate entities act as one organization.

8 7. David Miscavige controls and operates Scientology
9 and uses it to enforce his orders and carry out his attacks on
10 groups, agencies or individuals, including the acts against
11 ARMSTRONG alleged herein to the extent there is no separate
12 identity between Miscavige and CSI and any claim of such separate
13 identity should be disregarded.

14 8. Cross-Defendants DOES 1 through 100, inclusive, are
15 sued herein under such fictitious names for the reason that the
16 true names and capacities of said Cross-Defendants are unknown to
17 ARMSTRONG at this time; that when the true names and capacities of
18 said Cross-Defendants are ascertained ARMSTRONG will ask leave of
19 Court to amend this Cross-Complaint to insert the true names and
20 capacities of said fictitiously named Cross-Defendants, together
21 with any additional allegations that may be necessary in regard
22 thereto; that each of said fictitiously named Cross-Defendants
23 claim that ARMSTRONG has a legal obligation to Cross-Defendants by
24 virtue of the facts set forth below; that each of said
25 fictitiously named Cross-Defendants is in some manner legally
26 responsible for the acts and occurrences hereinafter alleged.

27 9. Armstrong was a Scientologist from 1969 until mid-
28 December, 1981. He was drawn into Scientology by representations

1 made by the organization and its founder L. Ron Hubbard
2 ("Hubbard") about his history, achievements, credentials,
3 character and intentions, and the history, credentials, character
4 and intentions of his organization.

5 10. Throughout his years in Scientology, Armstrong remained
6 dedicated to the accomplishment of its claimed and widely
7 publicized "aims":

8 "A civilization without insanity, without
9 criminals and without war, where the able can
10 prosper and honest beings can have rights, and
11 where man is free to rise to greater heights".

12 11. From 1971 Armstrong was a member of the Sea
13 Organization, Scientology's highest administrative echelon which
14 controlled all lower organizations internationally without regard
15 for corporate formality. Sea Organization members have an
16 unconditional reverence for the words of Hubbard, whether true or
17 false, and may not, on penalty of severe punishment, question the
18 truth or falsity of his words.

19 12. Armstrong held several Sea Organization staff positions
20 including legal officer, public relations officer and intelligence
21 officer. He worked personally for Hubbard as a communications
22 aide and in his household staff. Armstrong gained a knowledge of
23 organization structure, control, policies and orders. He gained a
24 knowledge of organization policies and practices regarding
25 "ethics," its system of discipline and punishment, including its
26 ultimate sanction, "fair game," whereby a person who was labelled
27 a "suppressive person" or "enemy":

28 "May be deprived of property or injured by any

1 means by any Scientologist without discipline
2 of the Scientologist. May be tricked, sued or
3 lied to or destroyed."

4 13. At the beginning of 1980 leaders at Sea Organization
5 headquarters at Gilman Hotsprings, California, in anticipation of
6 a raid by law enforcement agencies, ordered a massive shredding of
7 evidence showing Hubbard's control of the organization. In the
8 course of the shredding operation Armstrong discovered several
9 boxes containing Hubbard's personal documentary records.
10 Armstrong petitioned Hubbard to assemble these documents and to
11 search for more personal records to form an archive to be used to
12 create a Hubbard biography. Hubbard approved the petition.

13 14. During his assembly and study of Hubbard's records
14 Armstrong discovered that an alarming number of the organization's
15 and Hubbard's representations about Hubbard's history,
16 achievements, credentials, character and intentions were without
17 basis in fact and, indeed, false ("the misrepresentations").
18 Armstrong brought these discoveries to the attention of
19 organization executives responsible for publications in the hope
20 of bringing the misrepresentations that Scientology systematically
21 disseminated to Scientologists and the world at large into
22 conformity with the truth.

23 15. The response of the organization's leaders to
24 Armstrong's attempt to correct the misrepresentations being
25 disseminated was to label him a security risk and order him to a
26 "security check," an accusatory interrogation using Scientology's
27 electro-psychometer (E-meter) as a lie detector. Armstrong
28 concluded that Hubbard and his organization's leaders did not

1 sincerely seek to accomplish Scientology's stated "aims" but
2 sought unimpeded domination and the acquisition of wealth at the
3 expense of honesty and freedom, to the detriment of their
4 followers, and to the peril of their perceived opponents.
5 Armstrong came to the realization that Hubbard and his
6 organization were dishonest and violent, causing him to terminate
7 his affiliation with them.

8 16. Shortly after Armstrong left the organization it
9 published two "Suppressive Person Declares," naming him a
10 "suppressive person," accusing him of falsely of "crimes" and
11 "high crimes," and thus making him "fair game."

12 17. To protect himself following the publication of the
13 "suppressive persons declares," Armstrong obtained copies of
14 documents showing that Hubbard's and the organization's
15 representations concerning their history, achievements,
16 credentials, character and intentions were false.

17 18. On August 2, 1982 the Scientology organization sued
18 Armstrong for conversion of the subject documents in a case
19 captioned Church of Scientology of California and Mary Sue Hubbard
20 v. Gerald Armstrong, Los Angeles Superior Court case No. C 420153
21 ("Armstrong I"). Armstrong retained Boston, Massachusetts
22 attorney Michael Flynn ("Flynn") and the Woodland Hills,
23 California law firm of Contos & Bunch, to represent Armstrong
24 against the organization.

25 19. Armstrong filed a cross-complaint for fraud, breach of
26 contract and intentional infliction of emotional distress. The
27 cross-complaint was bifurcated from the underlying document case
28 which was tried by Judge Paul G. Breckenridge, Jr. in the spring

1 of 1984.

2 20. Following a 30-day trial, on June, 20, 1984 Judge
3 Breckenridge rendered a decision in favor of Armstrong which held
4 that Hubbard and his organization were antisocial in nature and
5 condemned its practices. He wrote:

6 "In addition to violating and abusing its own
7 members civil rights, the organization over
8 the years with its "Fair Game" doctrine has
9 harassed and abused those persons not in the
10 [organization] whom it perceives as enemies.
11 The organization clearly is schizophrenic and
12 paranoid, and this bizarre combination seems
13 to be a reflection of its founder LRH. The
14 evidence portrays a man who has been virtually
15 a pathological liar when it comes to his
16 history, background and achievements. The
17 writings and documents in evidence
18 additionally reflect his egoism, greed,
19 avarice, lust for power, and vindictiveness
20 and aggressiveness against persons perceived
21 by him to be disloyal or hostile."

22 21. From 1979 Flynn was responsible for much litigation
23 vindicating the rights of individuals injured by Scientology.

24 In a set of cases in Federal Court in Boston, Massachusetts
25 Flynn represented Lucy Garritano, Steven Garritano, Peter Graves,
26 Kim Vashel Hankins, Majorie Hansen, Janet Troy Labanara and
27 Michael Smith.

28 In a set of cases in Federal Court in Tampa, Florida, Flynn

1 represented former mayor of Clearwater, Gabriel Cazares, Nan and
2 John McLean, Tonja Burden and Margery Wakefield.

3 In cases pending in Los Angeles, California Flynn
4 represented, among others, former organization executives Laurel
5 Sullivan ("Sullivan"), William Franks ("Franks"), Howard Schomer
6 ("Schomer"), Edward Walters ("Walters") and Martin Samuels
7 ("Samuels"), all organization contemporaries of Armstrong.

8 22. From the time Flynn began representing individuals and
9 entities in litigations with Scientology the organization labelled
10 him an "enemy" and subjected him to a campaign of "fair game."
11 Acts against Flynn pursuant to the "fair game doctrine" included
12 more than a dozen lawsuits, frivolous bar complaints, theft of
13 records, infiltration of his office, illegal electronic
14 surveillance, defamation, framing with crimes, and attempted
15 assassination. Flynn also brought a lawsuit against Scientology,
16 captioned Michael J. Flynn v. Scientology, United States District
17 Court, Central District of California, Case No. CV 850485-R,
18 seeking damages for the years of fair game acts.

19 23. Flynn would ultimately settle all of the cases in each
20 of the foregoing three blocks when given a large sum of money by
21 Scientology to make such cases "go away."

22 24. In the first half of 1986 plaintiff's attorney Charles
23 O'Reilly tried the case of Larry Wollersheim v. Church of
24 Scientology of California, Los Angeles Superior Court Case No. C
25 332827. After a 95-day trial, the jury awarded a verdict in
26 Wollersheim's behalf in the amount of \$30,000,000.00.

27 25. At this time, Armstrong's cross-complaint, seeking
28 damages for Scientology's "fair game" conduct was set for trial at

1 the beginning of 1987. This conduct included assault, harassment,
2 attempted framing of Armstrong in an alleged plot to "take over"
3 Scientology, filing false criminal charges with the Los Angeles
4 District Attorney, filing false criminal charges with the Boston
5 office of the FBI, filing false declarations, bringing contempt of
6 court proceedings on three occasions based on false charges,
7 making false accusations in internationally published media of
8 crimes including crimes against humanity, and culling and
9 disseminating information from Armstrong's supposedly confidential
10 auditing (psychotherapy) files.

11 26. I am informed and believe and allege thereon that during
12 1986 organization leaders contacted Flynn, offered to discontinue
13 its fair game operations against him and offered him a lump sum of
14 money of several million dollars to settle all the Scientology
15 cases in which he had a role, including his own case, if he would
16 get all the litigants, which included Armstrong, Schomer and
17 Samuels, or claimants, which included Sullivan, Franks and
18 Walters, to sign organization-prepared settlement contracts. In
19 promising the payment of a lump sum to Flynn without specifying
20 what amount was to be applied in settlement of what claims
21 Scientology made Flynn its agent in opposition to the interests of
22 his clients.

23 27. Flynn had multiple conflicts of interest with his
24 Scientology litigation clients which he failed to disclose, and
25 otherwise failed to insure that said clients received proper
26 unconflicted representation. I am informed and believe and allege
27 thereon that he dealt with them separately and threatened that if
28 such persons refused to settle, he would abandon such persons as

1 their lawyer in addition to causing the unavailability of certain
2 critical witnesses. He represented, moreover, that the settlement
3 agreements were legally unenforceable.

4 28. The cases in which Flynn had a role settled in three
5 main blocks. The first block to settle was the Boston cases, the
6 second block was the Florida cases, and third was the Los Angeles
7 cases which settled in December, 1986 in Los Angeles and included
8 among approximately 15 plaintiffs or claimants Armstrong,
9 Sullivan, Franks, Schomer, Walters and Samuels.

10 29. Sullivan had been a long-time Sea Organization member,
11 Hubbard's personal public relations officer for many years, and
12 had played a key part in the corporate restructuring of the
13 organization in order to insulate top management from civil and
14 criminal liability. She testified in the Armstrong I trial, the
15 Wollersheim trial, and the 1985 trial of Julie Christofferson v.
16 Scientology, Circuit Court of the State of Oregon, Multnomah
17 County, No. A7704-05184, in which the jury had awarded a verdict
18 in Christofferson's behalf in the amount of \$39,000,000.00.

19 30. Franks had been a long-time Sea Organization member, the
20 organization's Executive Director International, and had knowledge
21 of organization covert intelligence operations and finances. He
22 had testified in the Christofferson and Wollersheim trials.

23 31. Schomer had been a long-time Sea Organization member, in
24 charge of Hubbard's finances and responsible for transferring
25 Scientology charitable corporation funds to Hubbard's personal
26 accounts. He had testified in the Armstrong I and Christofferson
27 trials.

28 32. Walters had been a long-time Scientology auditor

1 (therapist) and a covert operative for the organization's Guardian
2 Office, the name used until 1982 for its intelligence, legal and
3 public relations bureaus when it became the Office of Special
4 Affairs. Walters had testified in the Armstrong I, Christofferson
5 and Wollersheim trials.

6 33. Samuels had been a long-time Scientology franchise
7 holder and had knowledge of the organization's practice of
8 training its litigation witnesses to lie. He testified in the
9 Christofferson trial.

10 34. Armstrong had testified in the Armstrong I and
11 Christofferson trials and in a Scientology-related custody case in
12 London, England, and in another approximately twenty-five days in
13 depositions in some twelve lawsuits.

14 35. I am informed and believe that each settlement contract
15 contained provisions which called for complete silence regarding
16 Scientology-related experiences, non-assistance to adverse
17 parties, non-disclosure of settlement conditions, prohibition of
18 sworn testimony and avoidance of service of process. Armstrong's
19 settlement contract also contained provisions allowing the
20 organization to appeal from the scathing language of the
21 Breckenridge decision in Armstrong I and preventing Armstrong from
22 opposing any appeals the organization might take. With respect to
23 Scientology's appeal of the Breckenridge decision, Scientology and
24 Flynn entered into two side agreements, undisclosed to Armstrong,
25 which (1) limited any damages awarded on retrial to \$25,000, and
26 (2) guaranteed that Armstrong Scientology would indemnify
27 Armstrong's obligation to pay such judgement, should Scientology
28 obtain reversal of the appeal and prevail upon retrial of the

1 case. The settlement contract also required Armstrong to collude
2 with Scientology with respect to obtaining certain documents that
3 constituted evidence of a conspiracy among Scientology executives
4 and their attorneys to cover up criminal activity and to commit
5 frauds on the Internal Revenue Service and other governmental
6 agencies litigated and reported in United States v. Zolin, Case
7 No. CV 85-0440-HLH(Tx).

8 36. Armstrong contends that the foregoing provisions are
9 designed and intended to suppress evidence and therefore
10 constitute an obstruction of justice thereby rendering the
11 settlement contract enforceable and void as against public policy.

12 37. Flynn and the other attorneys representing Armstrong and
13 other anti-organization litigants also signed contracts with
14 Scientology which prohibited their representation of anyone
15 including their former anti-organization clients in litigation
16 against the organization.

17 38. Effects of the provisions of such settlement contracts
18 were the stripping of the Flynn-represented parties of their First
19 Amendment rights of Free Speech and the stripping of the public of
20 the right to hear from first-hand sources the truth about
21 Scientology so that there could be free competition in the
22 marketplace of ideas.

23 39. An additional effect of said provisions binding,
24 censoring, suppressing and restraining the Flynn-represented
25 parties' rights to Free Speech was to create an opportunity for
26 Scientology to disseminate manufactured falsehoods in the
27 marketplace of ideas, to obtain an unfair advantage with respect
28 to adversaries in various pending and future litigation, and to

1 control the availability of evidence harmful to it in future
2 litigation.

3 40. The purpose of each of the aforementioned settlement
4 contracts to effectuate certain objectives, including but not
5 limited to, the following:

6 a. Maximizing Scientology's ongoing assertion and claim
7 that it is a bona fide religion;

8 b. Maximizing its opportunities to cover up its criminal
9 activity, or obtain a First Amendment immunity from having to be
10 accountable for the consequences of its conduct;

11 c. Slandering the reputation of Armstrong for truth and
12 veracity in order to make Scientology's false claims about its
13 nature and practices seem credible by putting Armstrong into a
14 posture where Scientology could lie about Armstrong with impunity
15 because if he spoke out about Scientology, it would sue him into
16 silence based upon the settlement contract.

17 41. Following the December, 1986 settlement, Scientology
18 continued to attack Armstrong pursuant to its "fair game
19 doctrine." Its acts include, but are not limited to, publishing a
20 false and unfavorable description of Armstrong's in a "dead agent"
21 pack relating to writer and anti-Scientology litigant Bent
22 Corydon; filing several affidavits in the case of Church of
23 Scientology of California v. Russell Miller and Penguin Books
24 Limited, case no. 6140 in the High Court of Justice in London
25 England which falsely accused Armstrong of violations of court
26 orders, and falsely labeled him "an admitted agent provocateur of
27 the U.S. Federal Government"; and delivering copies of an edited
28 version of an illegally obtained 1984 videotape of Armstrong to

1 the international media.

2 42. Scientology threatened Armstrong with lawsuits on six
3 occasions if he did not obey its orders to not testify regarding
4 Scientology's dark side, thus aiding and abetting its obstruction
5 of justice in the Miller case, in the case of Bent Corydon v.
6 Scientology, Los Angeles Superior Court No. C 694401, wherein
7 Corydon had subpoenaed Armstrong as a witness, and in the case of
8 Scientology v. Yanny, Los Angeles Superior Court No. C 690211.
9 Scientology also threatened to release Armstrong's confidences,
10 which it had stolen from a friend, if Armstrong did not assist the
11 organization in preventing Corydon from gaining access to the
12 Armstrong I court file.

13 43. In the fall of 1989, right after receiving a series of
14 threats from organization attorney Lawrence Heller, Armstrong, who
15 had not earlier responded to Scientology's post-settlement
16 attacks, concluded that he was being used to obstruct justice and
17 that he had a right and a duty to not obstruct justice.

18 44. In February, 1990 Armstrong petitioned the California
19 Court of Appeal, Second District, Division Three, for permission
20 to file a response in the appeal from the Breckenridge decision
21 that Scientology had been able to maintain in the intervening
22 years. The Court of Appeal granted Armstrong's petition and he
23 filed a respondent's brief. On July 29, 1991 the Court of Appeal
24 issued its opinion, Scientology v. Armstrong, (1991) 232 Cal.App.
25 3d 1060, 283 Cal.Rptr. 917, affirming the Breckenridge decision.

26 45. On October 3, 1991 Scientology filed a motion in
27 Armstrong I to enforce the settlement contract against Armstrong,
28 claiming that the contract had been approved by Judge

1 Breckenridge. On December 23, 1991 Judge Bruce R. Geernaert
2 denied the motion, ruling that Judge Breckenridge had not been
3 shown the contract. He also said:

4 "[T]hat is ... one of the most ambiguous, one-sided
5 agreements I have ever read. And I would not have
6 ordered the enforcement of hardly any of the terms had I
7 been asked to, even on the threat that, okay, the case
8 is not settled. "I know we like to settle cases. But we
9 don't like to settle cases and, in effect, prostrate the
10 court system into making an order which is not fair or
11 in the public interest."

12 46. Scientology's actual purpose in bringing said motion was
13 to obstruct justice, suppress evidence, slander Armstrong's
14 reputation, retaliate against him for exercising his rights, and
15 to make an example of him so that knowledgeable witnesses who had
16 been betrayed in the settlement with the organization would
17 continue to be scared into silence.

18 47. On February 4, 1992 Scientology filed a lawsuit
19 captioned Church of Scientology v. Gerald Armstrong, Marin
20 Superior Court Case No. 152229 ("Armstrong II") claiming it was
21 seeking liquidated damages for alleged contract breaches and
22 asking for injunctive relief. The case was transferred to Los
23 Angeles Superior Court and given Case No. BC 052395. On May 27,
24 1992 at a hearing on Scientology's motion for a preliminary
25 injunction Judge Ronald M. Schigian, who refused to enforce
26 certain of the settlement contract's provisions regarding
27 restraints on Armstrong's rights to Freedom of Speech, stated:

28 "The information (Armstrong's experiences inside the

1 Scientology organization) that's being suppressed in
2 this case, however, is information about extremely
3 blame-worthy behavior of [the Scientology organization]
4 which nobody owns; it is information having to do with
5 the behavior of a high degree of offensiveness and
6 behavior which is meritorious in the extreme.

7 It involves abusing people who are weak. It involves
8 taking advantage of people who for one reason or another
9 get themselves enmeshed in this extremist view in a way
10 that makes them unable to resist it apparently. It
11 involves using techniques of coercion."

12 Judge Sohigian did, however, prohibit Armstrong from voluntarily
13 giving sworn testimony on behalf of private individual plaintiffs
14 with contemplated or pending claims against Scientology or
15 assisting such persons with his special knowledge of Scientology.
16 Armstrong II is presently stayed pending the outcome of an appeal
17 from the Sohigian ruling.

18 48. On July 8, 1993, after Armstrong II was stayed
19 Scientology filed a lawsuit captioned Church of Scientology
20 International v. Gerald Armstrong & The Gerald Armstrong
21 Corporation, Los Angeles Superior Court Case No. BC 084642
22 ("Armstrong III") claiming again that it was seeking liquidated
23 damages for alleged contract breaches and asking for injunctive
24 relief. Armstrong III has also been stayed pending the outcome of
25 the appeal from the Sohigian ruling.

26 49. On July 23, 1993, Scientology filed a lawsuit captioned
27 Church of Scientology International v. Gerald Armstrong, Michael
28 Walton & The Gerald Armstrong Corporation, Marin Superior Court

1 Case No. 157680 ("Armstrong IV") claiming to be a creditor of
2 Armstrong and alleging a conspiracy to defraud it of liquidated
3 damages it claimed were owed by Armstrong.

4 50. Scientology's actual purpose in filing and prosecuting
5 Armstrong II, III and IV was to obstruct justice, suppress
6 evidence, assassinate Armstrong's reputation, retaliate against
7 him for exercising his rights, use the discovery process for
8 gathering intelligence on its enemies, and to make an example of
9 Armstrong so that knowledgeable witnesses who had been betrayed in
10 the settlement with the organization would continue to be scared
11 into silence.

12 51. Armstrong IV is a part of Scientology's use of
13 litigation as war against its targeted "enemies" and our justice
14 system itself. Scientology's tactics in its use of litigation as
15 war include causing its opposition to do needless work, needlessly
16 driving up costs to its opposition, ignoring the truth, senseless
17 relitigation of already decided issues, perjury, destruction and
18 hiding of evidence, intimidation of witnesses, intimidation of
19 opposing counsel, and intimidation of judges.

20 52. Indeed, United States District Court Judge James M.
21 Ideman wrote in a declaration he executed June 17, 1993 and filed
22 in the United States Court of Appeals:

23 "[Scientology] has recently begun to harass my former
24 law clerk who assisted me on this case, even though she
25 now lives in another city and has other legal
26 employment. This action, in combination with other
27 misconduct by counsel over the years has caused me to
28 reassess my state of mind with respect to the propriety

1 of my continuing to preside over the matter. I have
2 concluded that I should not.

3 [Scientology's] non-compliance (with Court orders) has
4 consisted of evasions, misrepresentations, broken
5 promises and lies, but ultimately with refusal. As part
6 of this scheme to not comply [Scientology has]
7 undertaken a massive campaign of filing every
8 conceivable motion (and some "unconceivable") (Judge
9 Ideman's parens.) to disguise the true issues in these
10 pretrial proceedings. Apparently viewing litigation as
11 war, plaintiffs by this tactic have had the effect of
12 massively increasing costs to the other parties, and,
13 for a while, to the Court.

14 Yet it is almost all puffery -- motions without merit or
15 substance."

16 53. The Armstrong IV complaint, and all of Scientology's
17 papers filed in the case, are constitute an abuse of process
18 because it is intended to support Scientology's strategy of
19 retributive litigation in furtherance of its plan and scheme to
20 obstruct justice and to suppress evidence by making an example of
21 Armstrong in order to intimidate other persons who are
22 knowledgeable about Scientology from coming forward and speaking
23 the truth. Scientology's filing and litigation of Armstrong IV is
24 in conformity with its express policy specifying the improper use
25 of litigation. Said policy, in part, is stated as follows:

26 "The purpose of the suit is to harass and discourage
27 rather than to win. [¶] The law can be used very
28 easily to harass, and enough harassment on somebody who

1 is simply on the thin edge anyway...will generally be
2 sufficient to cause his professional decease. If
3 possible, of course, ruin him utterly. "

4 FIRST CAUSE OF ACTION

5 (For Declaratory Relief Against All Cross-Defendants)

6 54. Cross-complainant Armstrong realleges paragraphs 1
7 through 53, inclusive and incorporates them by reference herein as
8 though fully set forth.

9 55. An actual controversy has arisen and now exists between
10 Armstrong and plaintiff concerning the following issues:

11 a. Whether or not the settlement contract upon which
12 Scientology bases its right to proceed herein is legal and
13 enforceable;

14 b. Whether or not Scientology is a creditor within the
15 meaning of the Uniform Fraudulent Transfer Act;

16 c. Whether or not Scientology has a claim within the
17 meaning of the Uniform Fraudulent Transfer Act;

18 d. Whether or not Armstrong is a debtor within the meaning
19 of the Uniform Fraudulent Transfer Act;

20 e. Whether or not Armstrong owes a debt to Scientology
21 within the meaning of the Uniform Fraudulent Transfer Act.

22 SECOND CAUSE OF ACTION

23 (For Abuse of Process Against All Cross-Defendants)

24 56. Cross-complainant Armstrong realleges paragraphs 1
25 through 55, inclusive and incorporates them by reference herein as
26 though fully set forth.

27 57. Cross-defendants, and each of them, have abused the
28 process of this court in a wrongful manner, not proper in the

1 regular conduct of proceedings, to accomplish purposes for which
2 said proceedings were not designed, specifically obstruction of
3 justice, suppression of evidence, assassination of Armstrong's
4 reputation, retaliation against him for exercising his rights,
5 gathering intelligence on its enemies, and making an example of
6 Armstrong so that knowledgeable witnesses who had been betrayed in
7 the settlement with the organization would continue to be scared
8 into silence.

9 58. Cross-defendants, and each of them, acted in this
10 litigation with an ulterior motive to obstruct justice, suppress
11 evidence, assassinate Armstrong's reputation, retaliate against
12 him for exercising his rights, use the discovery process for
13 gathering intelligence on its enemies, and to make an example of
14 Armstrong so that knowledgeable witnesses who had been betrayed in
15 the settlement with the organization would continue to be scared
16 into silence.

17 59. Defendants, and each of them, have abused the process of
18 this court in a wrongful manner, not proper in the regular conduct
19 of the proceedings in Armstrong IV and in other litigation, to
20 accomplish a purpose for which said proceedings were not designed,
21 specifically, the suppression of evidence, the obstruction of
22 justice, the assassination of cross-complainant's reputation, and
23 retaliation against said cross-complainant for prevailing at trial
24 in Armstrong I, and for continuing to publicly speak out on the
25 subject of Scientology, all so as to be able to attack cross-
26 complainant and prevent cross-complainant from being able to take
27 any effective action to protect himself.

28 60. Defendants, and each of them, acted with an ulterior

1 motive to suppress evidence, obstruct justice, assassinate cross-
2 complainant's reputation, suppress ARMSTRONG's First Amendment
3 rights, and to retaliate against cross-complainant in said
4 litigation.

5 61. That defendants, and each of them, have committed
6 willful acts of intimidation, threats, and submission of false and
7 confidential documents not authorized by the process of
8 litigation, and not proper in the regular conduct of litigation.

9 62. Cross-complainant has suffered damage, loss and harm,
10 including but not limited to his reputation, his emotional
11 tranquillity, and privacy.

12 63. That said damage, loss and harm was the proximate and
13 legal result of the use of such legal process.

14 PRAYER

15 WHEREFORE, cross-complainant seeks relief as is hereinafter
16 pleaded.

17 ON THE FIRST CAUSE OF ACTION

18 1. For a declaration that

19 a. The settlement contract upon which Scientology bases its
20 right to proceed herein is illegal and unenforceable;

21 b. Scientology is a not creditor within the meaning of the
22 Uniform Fraudulent Transfer Act;

23 c. Scientology does not have a claim within the meaning of
24 the Uniform Fraudulent Transfer Act;

25 d. Armstrong is not a debtor within the meaning of the
26 Uniform Fraudulent Transfer Act;

27 e. Armstrong does not owe a debt to Scientology within the
28 meaning of the Uniform Fraudulent Transfer Act.

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- 2. For damages according to proof.
- 3. For attorney's fees and costs of suit.

ON THE SECOND CAUSE OF ACTION

- 1. For general and compensatory damages according to proof.
- 2. For attorney's fees and costs of suit.

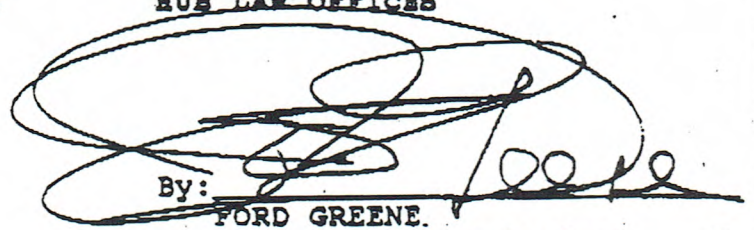
ON ALL CAUSES OF ACTION

- 1. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

DATED: February 17, 1994

HUB LAW OFFICES



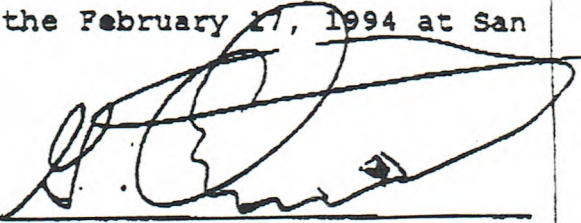
By: FORD GREENE.
Attorney for Defendant

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VERIFICATION

I, the undersigned, am the cross-complainant in the above entitled action. I know the contents of the foregoing First Amended Cross-Complaint I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct according to the laws of the State of California and that this declaration was executed on the February 17, 1994 at San Anselmo, California.

By: 
GERALD ARMSTRONG

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: FIRST VERIFIED AMENDED CROSS-COMPLAINT FOR ABUSE OF PROCESS on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028

MICHAEL WALTON
P.O. Box 751
San Anselmo, California 94960

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: February 17, 1994

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On March 1, 1994, I served the foregoing document described as DECLARATION OF ANDREW H. WILSON on interested parties in this action,

by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

by placing the original true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
P.O. Box 751
San Anselmo, CA 94979

BY MAIL

*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on March 1, 1994, at Los Angeles, California.

**** (BY PERSONAL SERVICE)** I delivered such envelopes by hand to the offices of the addressees.

Executed on _____, at Los Angeles, California.

[] BY FACSIMILE TRANSMISSION: From FAX No. (213) 953-3351 to the below persons at the facsimile numbers indicated, at _____.m., directed to the below addresses. The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine. Pursuant to Rule 2005(i), I caused the machine to print records of the transmissions, copies of which are attached to this declaration.

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949
FAX No. (415) 456-5318

MICHAEL WALTON
P.O. Box 751
San Anselmo, CA 94979
FAX No. (415) 394-8560

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)